

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE	:
	: CHAPTER 13
RICHARD JAMES DAVIS	:
and CYNTHIA JAYNE DAVIS	: BANKRUPTCY NO. 05-21794 TMT
	:
DEBTORS.	:

RICHARD JAMES DAVIS	:
and CYNTHIA JAYNE DAVIS	:
Plaintiffs, Debtors	:
	: Adv Pro No.
vs.	:
	:
SOVEREIGN BANK	:
Defendant	:
	:
vs.	:
	:
FREDERICK REIGLE	:
Trustee	:

COMPLAINT DETERMINING VALIDITY AND PRIORITY AND
EXTENT OF LIEN PURSUANT TO 11 USC 506 AND NBR 7001

AND NOW COME the Debtors, Richard James Davis and Cynthia Jayne Davis, by and through their counsel, Eric Lester Leinbach, Esq., and allege and aver as follows:

FIRST COUNT

1. This is a Core proceeding and jurisdiction is founded pursuant to 28 USC 1334 and 28 USC 157.
2. Venue is proper pursuant to 28 USC 1408 and 1409.
3. The Debtors filed a Petition under Chapter 13 of the United States Bankruptcy Code on or about April 1, 2005; and residing at 339 N. Cherry Street, in the City of Easton, County of Northampton, Commonwealth of Pennsylvania 18042.

4. Debtors have granted a first mortgage to Wells Fargo Home Mortgage. A Secured Proof of Claim, Claim No. 11 has been filed relating to their first mortgage lien in the amount of \$28,238.00.

5. The Debtors granted a second mortgage on their real property located at 339 N. Cherry Street, in the City of Easton, County of Northampton, Commonwealth of Pennsylvania 18042; to EMC Mortgage Corp. A Secured Proof of Claim, Claim No. 1, has been filed relating to their second mortgage lien in the amount of \$53,388.00.

6. The Debtors granted a third mortgage on their real property located at 339 N. Cherry Street, in the City of Easton, County of Northampton, Commonwealth of Pennsylvania 18042; to Sovereign Bank. A Secured Proof of Claim, Claim No. 3 has been filed relating to their third mortgage lien in the amount of \$2,612.00.

7. The value of the Debtors' real property which is their domicile and residence is \$65,000.00.

8. Upon information and belief, the third mortgage lien exceeds the fair market value and there is no equity for the third mortgage lien of Sovereign Bank.

9. Upon information and belief, the Debtors should be allowed to have the third mortgage lien voided, canceled, and otherwise avoided at the closing of their case.

10. Counsel has not appeared on behalf of Sovereign Bank

11. Upon information and belief, 11 USC 506 permits the Debtors to bifurcate and reclassify secured claims.

12. Frederick Reigle is the duly appointed Standing Chapter 13 Trustee in the within matter.

WHEREFORE, the Debtors respectfully request this Honorable Court enter an Order as follows:

(a) Declaring Sovereign Bank, their successors and or assigns have no valid perfected security interest or recorded mortgage against the Debtors' real property located at 339 N. Cherry Street, in the City of Easton, County of Northampton, Commonwealth of Pennsylvania 18042.

(b) Declaring any allowed secured claim to be unsecured to the extent that it exceeds the fair market value of the collateral and reclassified the claim of Sovereign Bank, from a totally allowed, secured claim in the amount of \$2,612.00 or to the fair market value, and a totally allowed, unsecured, non-priority claim in the amount of \$2,612.00.

(c) Declaring the mortgage, lien and any security interest of Sovereign Bank, against the Debtors' real property located at 339 N. Cherry Street, in the City of Easton, County of Northampton, Commonwealth of Pennsylvania 18042, void to the extent that is not secured.

(d) Compelling the cancellation by Sovereign Bank, and/or their successor and assigns of any mortgage/lien of record against the Debtors' real property located at 339 N. Cherry Street, in the City of Easton, County of Northampton, Commonwealth of Pennsylvania, upon demand of the Debtors; at any time thirty days (30) after the discharge of the Debtors' and closing of Debtors' case.

(e) For an Order granting the Debtors limited special power of attorney to execute any cancellation or satisfaction of any recorded mortgage/lien upon the Debtors' real property located at 339 N. Cherry Street, in the City of Easton, County of Northampton, Commonwealth of Pennsylvania 18042; at any time sixty days (60) after the discharge of the Debtors' and closing of Debtors' case.

Date: January 17, 2006

/s/ Eric L. Leinbach, Esq.
Eric L. Leinbach, Esq.
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Easton, Pennsylvania 18042
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Attorney ID 56490
Attorney for the Debtors